

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Jim McBride

**SUBJECT: APPROVAL OF AN AMENDMENT  
TO THE LEASE WITH HAWGS  
SEAFOOD BAR**

**DATE:** November 22, 2004

Approved

*Ray Winter*

Date

*11/29/04*

**COUNCIL DISTRICT:** 3

## **RECOMMENDATION**

That the City Council approve an Amendment to the Lease Between the City of San Jose ("City") and Hawgs Seafood Bar ("Tenant") for Tenant's use of 5,070 sq. ft. of retail space adjacent to the Phil and Susan Hammer Theatre at 150 Paseo de San Antonio changing the Landlord under said agreement from the Redevelopment Agency of the City of San Jose to the City of San Jose and reducing the monthly base rent from \$9,695.22 to \$4,000 and restructuring the percentage rent so that it applies to those revenues in excess of \$100,000 per month.

## **BACKGROUND**

On December 17, 1999 the Redevelopment Agency of the City of San Jose entered into a 10 year lease with Hawgs Seafood Bar for the use of 5,070 sq. ft. of retail space located at 150 Paseo de San Antonio for the sole purpose of conducting the business of a restaurant and bar with on-site food and beverage sales and consumption, catering, and ancillary sales of retail products, with offices and storage related to the aforementioned use.

The lease agreement between the Redevelopment Agency and Hawgs Seafood Bar was amended three times. The third amendment, which commenced in December 2002, removed the requirement for base rent during any month that gross revenues did not reach \$150,000 and reduced the amount of the percentage rent to 4% of gross revenues as defined in the lease. The reduction in rent provided by this amendment expired on May 31, 2004, and Hawgs has been unable to pay the monthly base rent required under the current agreement.

In October of 2003 the Redevelopment Agency transferred the ownership of the leased premises to the City of San Jose and the lease agreement was assigned to the City at that time.

## **ANALYSIS**

Hawgs' sales have never reached the level that they originally anticipated. The lingering recession has greatly impacted high price point-restaurants. Although the economy is picking up, the Sharks lock-out means that Fall activity will not likely increase to the extent needed to compensate for a slow Summer. An additional challenge for this area is the upcoming construction of CIM's *Heart of the City* mixed-use project immediately adjacent to Hawgs.

Hawgs is an important activator of the Repertory Theatre Plaza, a public space centrally located along Paseo de San Antonio, which connects San Jose State University and Plaza de Cesar Chavez Park. The addition of new businesses along the Paseo including Camera Twelve Theaters, The Montgomery Hotel, Paragon restaurant, and Zyng Asian Grill will help to support this pedestrian corridor.

Over the last couple of years, Hawgs has taken positive steps to address operational issues in order to stay competitive, including revamping their marketing strategy and developing a lunch menu with a pricing structure that is designed to capture mid-day diners.

At the request of the tenant and in alignment with the Downtown Economic Strategy, General Services' staff negotiated a new rent structure that should provide rent at a higher level than received during the preceding 12 month period, and not threaten the survival of Hawgs in the downtown area.

The changes to the lease contained in the amendment are as follows:

1. The base rent for the space for the three year period starting June 1, 2004 shall be \$4,000 per month payable monthly.
2. The percentage rent will be increased from 4 % to 5% and shall be paid on all gross revenues in excess of \$100,000.
3. All of the provisions of the Lease not specifically addressed in the Amendment shall remain unchanged.

## **PUBLIC OUTREACH**

Not applicable.

## **COORDINATION**

This item has been coordinated with the Redevelopment Agency. The City Attorney's Office has approved the document as to form.

HONORABLE MAYOR AND CITY COUNCIL

November 22, 2004

**Subject: Approval of an Amendment to the Lease with Hawgs Seafood Bar**

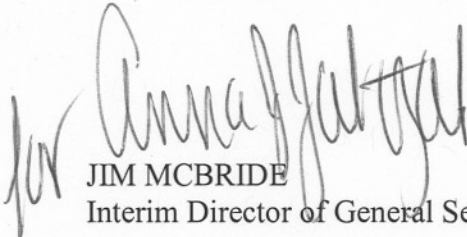
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**COST IMPLICATION**

This amendment to the Hawgs' lease complies with General Principle 3 of the Mayor's Expenditure Control Strategy as it helps to stimulate the local economy. The funds from this lease are used to help maintain this section of the San Antonio Plaza.

**CEQA**

Categorically Exempt

  
JIM MCBRIDE  
Interim Director of General Services

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